

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JOSIP DVORNEKOVIC,

CV. 04-1081-MA

Petitioner,

OPINION AND ORDER

v.

ROBERT O. LAMPERT,

Respondent.

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Attorney for Petitioner

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Attorney General
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MARSH, Judge

Petitioner, a state prisoner, brings this habeas corpus proceeding challenging his state convictions for attempted murder and assault in the second degree. It is uncontested that

petitioner's habeas corpus petition was filed beyond the one-year limitation period set forth in 28 U.S.C. § 2244(d).

Petitioner explains that his belated filing was caused by his "incorrect[] [belief] that, as long as he pursued his state remedies within the time period permitted under state law, then filed his federal habeas corpus petition within one year, he would not run afoul of the statute of limitations". Petitioner argues that to avoid offending the Suspension Clause, this court should "allow for equitable tolling of the limitations period during the two years in which the State of Oregon permits its prisoners to seek post-conviction relief under state law."

In short, petitioner moves the court to find that the limitation period set forth in § 2244(d) constitutes an unconstitutional suspension of the writ where, as here, the state limitation period for seeking state collateral relief is longer than the federal limitation period on habeas relief. Petitioner concedes, however, that this contention has been rejected by the Ninth Circuit. Ferguson v. Palmateer, 321 F.3d 820, 823 (9th Cir.), cert. denied, 540 U.S. 924 (2003). I am bound by the Ninth Circuit's ruling. Hasbrouck v. Texaco, Inc., 663 F.2d 930 (9th Cir. 1981), cert. denied, 459 U.S. 828 (1992). Accordingly, I reject petitioner's claim that § 2244(d) constitutes an unconstitutional suspension of the writ.

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CONCLUSION

Based on the foregoing, petitioner's habeas corpus petition (#2) is DENIED on the basis that it is untimely.

IT IS SO ORDERED.

DATED this 28th day of April, 2005.

_/_s/ Malcolm F. Marsh_____
Malcolm F. Marsh
United States District Judge